

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 314 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KIRITBHAI BHASKARBHAI TRIVEDI

Versus

BHAVNABEN KIRITBHAI TRIVEDI

Appearance:

MR YS MANKAD for Petitioner

MR PK JANI for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/06/2000

ORAL JUDGEMENT

This Revision Application has been filed by the petitioner-original opponent against the order dated 1st February, 1999 below application exh. 4 in H.M.P. No. 47 of 1998 passed by the Civil Judge (S.D.), Patan whereby the application exh. 4 has been allowed in part directing the petitioner to deposit Rs.4500/- per

month regularly towards the maintenance of respondent. The petitioner has been further directed to deposit Rs.750/- for litigation expenses. The petitioner has also been directed to deposit Rs.18000/- towards arrears of interim alimony from the date of filing the application i.e. 21.9.98 to 21.1.1999 on or before 1.3.1999.

2. The respondent filed an application under section 9 of Hindu Marriage Act for restitution of conjugal rights alongwith application exh. 4 for interim alimony under section 24 of the Hindu Marriage Act on the allegation that her marriage with the opponent was solemnised on 17th May, 1993 in accordance with Hindu rites and rituals at Patan. At that time, the petitioner was residing at Bhavnagar and subsequently, he was transferred to Mumbai where both of them resided for about 1.1/2 years. The applicant was ill-treated and misbehaved by the opponent-husband. She was pregnant, but there was a miscarriage due to misbehaviour of the opponent. It is also stated that the opponent-husband was working as a field officer in the State Bank of Saurashtra at Junagadh and he was earning Rs.8000/- per month. The opponent also owns a residential premises at Junagadh. The opponent was also possessing shares worth Rs. 2 lacs. He was also working at Patan as an accountant and delivering lectures in the university on banking subject. Thus, the petitioner's income was Rs. 3 lacs per year. The father of the petitioner is a retired teacher and gets pension. His both sisters are married. His brother is also serving. There is no responsibility on the petitioner-husband. The opponent wife is a practising advocate with a senior advocate Mr. N.H.Gandhi and she is not getting any income. She is rendering her honorary services. She claimed Rs.8000/per month by way of interim alimony and Rs.10,000/- for litigation expenses.

3. After considering the material on record, the lower court has partly allowed the application as stated above. Therefore, the petitioner husband has filed this Revision Application.

4. This Court (Coram: M.R.Callan, J) by its order dated 24.2.2000 issued Rule and stayed the payment of Rs.18000/- of arrears of interim alimony and though direction for deduction of Rs.4500/- for the month of February, 1999 from the salary of the petitioner and to be sent to the respondent by demand draft was required to be complied with. The amount, if any, already deposited by the petitioner for the respondent was directed to be

adjusted at the time of final hearing.

5. Heard the learned advocates for the parties and perused the relevant record. The learned counsel for the petitioner contended that the respondent wife is practising as a lawyer with some senior advocate at Patan. It cannot be believed that she is rendering honorary services. As such, she is able to maintain herself. Moreover, the petitioner has spent Rs. 38000/- for his father's operation and Rs.11000/- were stolen as a theft was committed in his house.

6. The learned counsel for the respondent submitted that the respondent wife has been neglected by the petitioner-husband. She was misbehaved and hence she has to file the suit for restitution of conjugal rights and she also claimed maintenance allowance. She is not getting anything from her senior while practising as a junior advocate and hence maintenance claimed should be allowed to her.

7. It is mentioned in the judgment of the lower court itself that the petitioner has admitted in his written statement that he is getting salary of Rs.9900/- per month, though other allegation regarding part time job and additional income were denied. The learned counsel for the parties made an attempt to settle the matter and had requested the Court for a direction to the parties to remain present before this Court. That request was granted by this Court vide order dated 9.5.2000 and the petitioner was directed to pay costs of Rs.250/- to the respondent for attending the matter on that day. The matter was postponed to 29.6.2000 and the parties were directed to remain present in the Court on that day. On 29.6.2000 the parties appeared and after hearing the learned counsel for the parties, both the parties appeared before the Court. This Court asked the respondent wife as to whether she is ready to go and co-habit with her husband. She replied that she is ready to go even as on today if the petitioner-husband permits her to live with him. When the husband was asked as to whether he is ready to accept the wife and will permit her to live with him, he refused to take her and permit her to live with him.

7. I have carefully considered the arguments of the learned advocates for the parties. The petitioner husband is admittedly getting Rs.9900/- per month towards his salary. There is no liability to maintain his parents or sisters and brothers. The learned counsel for

the petitioner could not point out that the respondent-wife is earning any income except bald statement. There is no material on record to show that the respondent wife is earning anything from her practice. The trial court has also considered the status of the parties and granted interim alimony of Rs.4500/per month to the respondent wife. In my view, the amount granted to the respondent-wife is not excessive. As such, I do not find any reasonable ground to interfere with the findings arrived at by the learned trial Judge. The impugned order does not suffer from any illegality or jurisdictional error or material irregularity causing injustice to any of the parties. This Revision Application therefore, deserves to be dismissed. Accordingly, it is dismissed. The order passed by the trial court is affirmed. Rule is discharged with no order as to costs. Interim relief earlier granted by this Court stands vacated.

(Kundan Singh,J)

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